IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO(HMA) No. 1 of 2000.

Judgement reserved on: 13.12.2005

Date of decision : **2.1.2006**

Sita Rani …….. Appellant

Versus

Baldev Singh and another …… Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: **Mr. O.P. Sharma, Sr. Advocate, with Mr. K.R. Kashyap, Advocate.**

For the respondents: **Mr. K.D. Sood, with Mr. B.K. Sood, Advocates, for respondent No. 1.**

Surjit Singh, Judge

The present appeal, under Section 28 of the Hindu Marriage Act, has been filed by the wife against a decree dated 4.12.1999 of the learned Additional District Judge (I), Kangra at Dharamshala, whereby marriage of respondent No. 1 Baldev Singh, hereinafter called husband,

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Whether reporters of local Papers may be allowed to see the Judgment?

has been dissolved on specific finding that the wife has deserted the husband and has also treated him with cruelty and somewhat vague finding that the wife has been living in adultery.

2. The husband filed a petition, under Section 13 of the Hindu Marriage Act, against the wife and proforma respondent No. 2 Sandeep Kumar, seeking dissolution of his marriage with the wife, on the grounds of desertion, cruelty and adultery. The averments, which were made in the petition, may be summed up thus. The marriage between the appellant and respondent Baldev Singh had taken place in November, 1977. The parties lived happily for two-three years. Thereafter the wife started leaving the matrimonial home without informing the husband and when tried to be checked by the husband, she even challenged his authority for being asked the permission for leaving the matrimonial home. There had been some litigation between the parties like the wife asking for grant of maintenance allowance and the husband filing a petition for dissolution of marriage on the grounds of cruelty and desertion in the year 1994. Those litigations were compromised. Ultimately the husband and wife started living separately. The wife started living in the old house of the husband and the husband constructed a new house for himself. The wife was granted maintenance allowance by the Court for herself and her minor children. The wife then instituted a suit in a Civil Court seeking issuance of permanent prohibitory injunction restraining the husband to marry another woman, named Sunita Devi, who was impleaded as a co-defendant in that suit. The suit was mainly filed with a view to defaming and causing mental cruelty to the husband. On 17.4.1998 two strangers were spotted by the husband in the house of the wife, who on seeing the husband took to heels. On 21.4.1998 proforma respondent Sandeep

Kumar was found in the company of the wife in one of the rooms of the house occupied by her and both of them were having obscene talk, which clearly indicated that the two were having physical relations. On seeing the husband, the wife came out of that room and went to another room. Respondent No. 2, however, remained in that room. The husband bolted both the rooms, viz. the one in which respondent No. 2 remained and the other to which the wife went, from outside and called the Pardhan and the Members of the Panchayat the same night to witness the aforesaid fact. Police was also sought to be called the same night but the policemen, being drunk, came to the spot the next following day, when they got the two rooms unlocked and took respondent No. 2 into custody.

3. The wife in her reply denied the allegations of desertion, cruelty and adultery. She pleaded that respondent No. 2 was her god-brother and had been visiting her in the capacity of such brother since long to the knowledge of the husband and that with a view to defaming her and making out a ground for dissolution of marriage by a decree of divorce, the husband created a scene. She admitted that she had been living separate from the husband in a house provided by him for the last several years, but blamed the husband for such a situation. She alleged that she was treated with cruelty and often subjected to physical torture, she offered to live with the husband, if he assured to treat her well.

4. Learned Additional District Judge framed the following issues, on the pleadings of the parties:-

> "1. Whether the respondent is maltreating the petitioner and as such is guilty of cruelty, as alleged? OPP.
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> 2. Whether the respondent has deserted the petitioner for a continuous period two years proceeding the representation of petition, as alleged. If so, its effect? OPP.

3. Whether the respondent No. 1 is living in adultery with respondent No. 2, as alleged, and as such is guilty of adultery? OPP

4. Whether the petition is not maintainable, as alleged? OPR-1.

5. Relief."

5. At the end of the trial, the trial Court gave definite findings on issues No. 1 and 2 in favour of the husband. As regards issue No. 3, the learned Additional District Judge held that the same stood answered in accordance with the findings on the other two issues, thereby keeping his finding vague qua this issue. While dealing with issues No. 1 and 2, the learned Additional District Judge touched the evidence, pertaining to the allegation of the wife and respondent No. 2 having adulterous relations and observed that the conduct of the wife amounted to cruelty.

6. Grievance of the wife is that the learned Additional District Judge has not appreciated the evidence in the right perspective nor has he applied the law correctly.

7. Having heard the learned counsel for the parties and perused the record, I have no manner of doubt that the findings returned by the learned Additional District Judge are contrary to the evidence on record and hence the decree passed by him is unsustainable.

8. While in the witness box as PW-1, the husband stated that he saw the wife and respondent No. 2 hugging each other and talking vulgar. In the petition, however, it is not alleged that the wife and respondent No. 2 were hugging each other or were having any other physical contact when they were allegedly spotted in the same room. It is

the husband's own case that before he went to call the Pardhan and the Members of the Panchayat, the wife left the room, in which she and the respondent No. 2 were allegedly spotted together, and went to another room and he bolted both the rooms from outside. One of the members of the Panchayat, examined by the husband, namely, PW-2 Thunia Ram, stated that when he and the Pardhan and some other Members went to the house of the wife, they caught her in the company of another man in a room, which was bolted from inside. The statement of this witness is on the face of it false, because it is not the case of even the husband that when the Pardhan and this witness and some other persons came to the spot, the wife and respondent No. 2 were together in the same room. The witness thus appears to be a liar.

9. The wife examined the Pardhan of the Panchayat, who stated that he went to the house of the wife not on the relevant night but on the next following day on being called by the husband and that the wife and respondent No. 2 were in two different rooms, which were locked from outside and that the wife had asserted that the man was her god brother.

10. It has come in the evidence of the husband himself, per testimony of PW-4 Subhash Chand, that the parties have a daughter, who was born in the year 1983 and that she was with her mother in the same room in which she had been locked, when the police came and opened the lock. The incident is alleged to have taken place in the year 1988. That means the daughter of the parties was around 15 years of age at that time. No one would believe that a woman would indulge in the obscene and adulterous conduct in the presence of her own daughter aged about 15 years.

11. The wife herself appeared as RW-1 and testified that respondent No. 2 was her god brother and had been living at Kangra since his childhood and was married and often visited her to enquire about her and her children's well being. This part of her testimony was not seriously challenged during the course of her cross-examination and, therefore, there does not appear to be any reason to disbelieve the same.

12. As a matter of fact, it appears from the evidence that since the parties have not been having cordial relations and have been living separate for the last several years, the husband has cooked up a false plea that the wife is living in adultery, so that he may not only escape the liability for the payment of maintenance allowance, which he has been ordered to pay by Court, but may also get rid of the wife by a decree of divorce, for which he unsuccessfully tried only a couple of years prior to the filing of the present petition.

13. As a result of the above stated position, the appeal is allowed, the impugned decree is set aside and the petition filed by the husband (respondent No. 1), under Section 13 of the Hindu Marriage Act, is dismissed. Decree sheet be drawn accordingly.

January 2, 2006 (BC) **(Surjit Singh), J.**